

CHARGE TO ENTER HEIR.

1627. February 15. E. of CASSILLIS against M^cMARTIN.

IN a double poinding, at the instance of Earl Cassillis against one M^cMartin, Andrew Cowper writer, and Schaw of Greenock, who had all charged the Earl to receive and enter them in certain lands, which they had comprised from the persons charged to enter heirs to umquhile John Crawford of Skeldon, their debtor, and which were holden of the Earl; THE LORDS found Andrew Cowper and Schaw of Greenock's comprisings to be null in this double poinding *etiam ope exceptionis*, without reduction, because after the sentence given against the daughters of the said umquhile John Crawford, as lawfully charged to enter heirs, recovered at their instances, there was not a special charge executed by them, charging the saids persons, against whom the said sentence was given, to enter heirs particularly to the lands comprised, without the which special charge, and that the same had been executed, and raised after the said sentence, THE LORDS found, That the said comprising could not be deduced; neither was the said comprising sustained, albeit the parties comprisers *answered*, That they had used a special charge before the comprising, which they also produced, by and attour the general charge to enter heirs, whereupon the sentence proceeded; because that special charge was executed, and raised also before that sentence; which the LORDS found could not be a ground whereupon the said comprising could be deduced; seeing it ought to have been executed, as said is, after the sentence, and before the comprising, as the inviolable use and custom is in the like cases; for that special charge is a part and preparation for the execution of a sentence, and so cannot precede the sentence; therefore the comprisings following thereon were found null, *ut supra*.

Act. Nicolson, M^cMartin per Miller.

Alt. —.

Clerk, Hay.

Fol. Dic. v. 1. p. 131. Durie, p. 274.

* * See The same parties, *voce* SUNDAY.

No

It was an indispensable form in apprisings, that a general charge must precede, then a sentence against the party, and then a special charge.